Taylor, J. : — In this case the three accused were charged with knowingly being in possession of a commercial quantity of uncustomed cigarettes which were found in a lorry driven by the second accused, the other two being also in the lorry.

Evidence of a statement made by one of them to a Customs officer was tendered by the prosecution but rejected by the learned President of the Sessions Court. At the close of the case for the prosecution all three accused were acquitted on the ground that they were not proved to have been in possession.

The Public Prosecutor appealed on the grounds :—

(a) that the evidence mentioned was wrongly rejected;

(b) that there was evidence of possession which, if unrebutted, would have warranted a conviction.

The reason why evidence of the statement was rejected was that no caution was shewn to have been administered to the accused by the Customs officer before he asked them certain questions. The President referred to Emergency Regulation 33 and held that "by analogy" a warning is required under the Customs Enactment. It was also said that there is a rule of practice that all such questions are to be preceded by a warning.

I cannot accept these arguments. We do not legislate by analogy. The Emergency Regulation specifies clearly the offences to which it applies and those do not include customs offences.

Evidence at this trial ought therefore to have been governed by the ordinary law alone.

No evidence was given, either at the trial or before me, as to the alleged rule of practice and I have never previously heard of it. No circular or written instruction of any kind was produced.

Assuming that something of the kind exists it cannot, unless it is a statutory rule, in any way modify the law. A caution of the type prescribed in the Emergency Regulations would manifestly conflict with Section 126 of the Customs Enactment.

I do not decide affirmatively that the evidence in question was admissible because I do not know its nature. It may have been a mere statement or it may have been a confession. If it was in fact a confession, the provisions of the Evidence Enactment apply to it. I decide only that it was *prima facie* admissible and that the reasons given for rejecting it were unsound.

On the issue of possession, the President rightly overruled an attempt to apply the definition of "possession" in the Chandu Enactment but he went on to say ".....the goods were not proved to be in the possession of any one of the accused."

This was not the true issue.

The three accused were charged jointly with joint possession.

The evidence raised an inference that they were acting in concert.

It is no doubt correct that where the evidence points to only one of several accused being guilty and the circumstances do not implicate one rather than another the Court will be left in doubt and therefore acquit them all (even though convinced that one or other of them must be guilty), but where, as here, the evidence points to a joint enterprise the Court ought to consider whether a *prima facie* case of joint possession is made out and if so call on the accused for their defence. It is still open to them to shew that the possession was not joint. In my view the learned President in this case misdirected himself on the law and did not weigh the evidence in correct relation to the charge; nor did he sufficiently analyse the case.

This Court will not grant a new trial, merely because misdirection is shewn; it is a matter of discretion, having regard to all the circumstances. In this case, considering the quantity of goods involved I award a new trial as against the first and third respondents.

The second accused appeared to be an independent driver and the cigarettes were wrapped in plain paper and mixed with innocent goods. In my view the case against him was weaker than that against the other two accused and as a matter of discretion I did not consider it necessary that he should stand a second trial.

Appeal dismissed against 2nd respondent. New trial ordered against 1st and 3rd respondents.

CHONG CHIN YUAN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Callow, J.) September 15, 1949]

[K.L. — Cr. App. from Sessions Court No. 40 of 1949]

Customs Enactment, 1936, Ss. 114 and 126 — Statement made to Customs Officer — Whether Customs Officer is a Police Officer — Statement interpreted by witness for prosecution.

This was an appeal from the Sessions Court, Kuala Lumpur, against the conviction and sentence of the

appellant for contravening section 114(1)(e) of the Customs Enactment. One of the grounds of appeal was that the statements made by the appellant to the Customs Officer was wrongly admitted in evidence.

Held, (1) that statements made to a Customs Officer in the course of an interrogation and investigation under S. 126 of the Customs Enactment, 1936, are admissible in evidence; (2) that in this case the fact that the statements were recorded through the interpretation of a prosecution witness so detracted from the value with which the statements can be assessed that they should have been disregarded; and (3) that on the facts of the case, there was insufficient evidence apart from the statements and therefore the appeal must be allowed.

Cases referred to :—

(1) *Rasiah v. Public Prosecutor* (1931-32) F.M.S.L.R. 45.

(2) *Huntington v. Attrill* (1893) A.C. 150.

(3) *Tan Shu En and another v. Public Prosecutor* (1948) M.L.J. 196.

(4) *R. v. Justices of Sunderland* (1901) 2 K.B. 357.

(5) *Chhin Sin Choy v. Chin Kee and others* 4 F.M.S.L.R. 3.

(6) *Aloo Nathu and others v. Gagubha Dipsangji* 19 I.L.R. Bom. 609.

(7) *Cheong See Leong v. Public Prosecutor* (1949) M.L.J. 67.

(8) *R. v. Carr-Briant* (1943) 2 A.E.R. 156.

CRIMINAL APPEAL FROM SESSIONS COURT.

K. K. Benjamin for the Appellant.

H. Shepherd (D. P. P.) for the Respondent.

Cur. Adv. Vult.

Callow, J. : — This is an appeal from the Sessions Court, Kuala Lumpur, against the conviction and fine of $15,000.00 or in default rigorous imprisonment for one year imposed on the 20th July, 1949, for contravening Section 114 (1) (e) of the Customs Enactment, 1936. The grounds of appeal are :—

> The learned President of the Sessions Court erred in not accepting the evidence given by the appellant and his witnesses;
>
> The learned President of the Sessions Court should have held that the explanation given by the appellant discharged the onus, if any, placed upon the appellant by Sub-section (ii) of Section 114 Customs Enactment;
>
> The learned President of the Sessions Court was wrong in finding that the tobacco in question was un-customed goods within the meaning of Section 2 Customs Enactment;
>
> The learned President of the Sessions Court drew wrong inferences from the evidence adduced at the trial of the appellant;
>
> The conviction is against the weight of evidence;
>
> The conviction is bad in law.

and further ground of appeal was later filed, namely :—

> The learned President of the Sessions Court should not have admitted the statements of the accused and P.W. 6 as they are inadmissible.

The principal facts are set out at the opening of the grounds of decision and are as follows :—

> On the 20th April, 1949 at about 10 a.m. the motor-lorry B 5639 was stopped by Preventive Outdoor Officer 117 on the main road at Selayang while proceeding towards Kuala Lumpur from Rawang. A search of the motor-lorry revealed that it was carrying sacks of Siamese Tobacco hidden beneath sacks of copra. The accused, who was travelling in the motor-lorry, was the owner of the tobacco and at the time when the motor-lorry was stopped had the tobacco in his possession. The tobacco was un-customed goods within the definition of such given in Section 2 of the Customs Enactment, the particular breach of the Customs Laws, Rules and Regulations alleged being that import duty on such tobacco had not been paid.

The appellant was apprehended on the morning of the 20th April, 1949 (I do not know the reason for delay of over two months in trial until the 23rd June, 1949). Within a few hours the matter was inquired into by a Proper Officer of Customs in accordance with the provisions of Section 126 of the Customs Enactment, 1936, and Exhibit P. 1 was recorded. The same day a statement (Exhibit P. 8) was recorded from the driver of the lorry Tan Tham Fong (5 P.W.), in Exhibit P. 8 his name is given as Yim Tham Fong, son of Yim Kooi. This statement was followed on the 11th May, 1949 by Exhibit P. 9 which contradicted and refuted Exhibit P. 8 in material particulars.

Objection was taken to these statements and the first and perhaps most important matter in this appeal is to decide whether statements recorded by a Customs Officer are now admissible in evidence. In *Rasiah v. Public Prosecutor*[1] it was held that a statement made by an accused person to a Customs Officer was admissible. This has never been overruled and so still stands, and Counsel inform me that until now the specific point has not since been put to a Court for decision.

Mr. Benjamin for the appellant contended that the Customs Enactment, 1936, repealing the Customs Enactment (Cap. 132) restricted the use of a statement made by an accused to a Customs Officer in the same way as the restraint operates against a statement made to a Police Officer (Criminal Procedure Code, Section 113 (i)); therefore *Rasiah's* case (cited *supra*) should not now be followed. Counsel pointed out that Police Officers have powers defined in Section 9 of the Customs Enactment, 1936, and so far as I appreciated this part of his argument it was to the effect that in view of the powers of a Police Officer by virtue of this Section being similar to a Customs Officer, and because a statement made by any person to a Police

Officer in the course of police investigation cannot be used in evidence (save as provided in Section 113 of the Criminal Procedure Code), therefore it follows that a statement made to a Customs Officer under circumstances such as one made to a Police Officer cannot be admitted in evidence.

Mr. Benjamin cited *Huntington v. Attrill*[2] to show that the Customs Enactment, 1936, is penal and must be strictly construed. I agree as to construction but I distinguish between enactments of revenue and proclamations purely penal. I cannot find that *Huntington v. Attrill* held more than stated in the headnote thereto :—

> **Held**, that the action being by a subject to enforce in his own interest a liability imposed for the protection of his private rights, was remedial, and not penal in the sense pleaded. It was not within the rule of international law which prohibits the Courts of one country from executing the penal laws of another or enforcing penalties recoverable in favour of the State.
>
> **Held**, further, that it was the duty of the Ontario Court to decide whether the statute in question was penal within the meaning of the international rule so as to oust its jurisdiction; and that such Court was not bound by the interpretation thereof adopted by the Courts of New York.

To describe an enactment as penal is ambiguous. Many enactments contain penal sections but are not necessarily thereby designated penal enactments. The subject is discussed exhaustively in *Craies* Statute Law (4th Edn. Part III, Chapter 1 and particularly at pages 451 to 453). I agree with Mr. Shepherd when he argued that the Opium and Chandu Proclamation enacted solely for the purpose of prohibiting the traffic in, possession and smoking of the drug is penal, and I do not so find the Customs Enactment, 1936; that Enactment contains provision for the seizure and forfeiture and for fines, but these are, as Mr. Shepherd said, imposed in the nature of damages to deter those who seek to defraud or evade revenue duties.

Great stress was laid by Counsel for the appellant on the case of *Tan Shu En and another v. Public Prosecutor*[3] That case held that a Chandu Officer under the Opium and Chandu Proclamation is a Police Officer for the purposes of Sections 25 and 26 of the Evidence Enactment, but in the judgment the difference between the Proclamation and Customs legislation was sharply drawn :—

> Moreover, and this is important, with the absolute prohibition on possessing or smoking chandu contained in the Opium and Chandu Proclamation, that Proclamation is purely penal. Therefore the Chandu Officers exercising powers under it do so in order to ensure that offenders against it are brought before the Courts for punishment.
>
> On the other hand, the Customs law, which was the legislation considered by Burton, J. in the **Rasiah case**, is a Revenue law, which prescribes penalties for defrauding the revenue. Further, in the **Rasiah case** Burton, J. pointed out that the Excise Officers were exercising special powers of their own and were not performing Police duties.
>
> Accordingly we distinguish **Rasiah v. Public Prosecutor supra** on those grounds.

I have compared carefully the Customs Enactment, 1936, with the repealed Customs Enactment (Cap. 132) which was operative when *Rasiah's case* (cited *supra*) was decided. In my view the current Enactment (5 of 1936) adds to police responsibilities by sanctioning certain powers hitherto confined to Customs Officers. Nowhere do I find anything in derogation of the powers of a Customs Officer.

Now section 126 of the Customs Enactment, 1936, reads :—

> Every person required by the Proper Officer of Customs to give information on any subject which it is such officer's duty to enquire into under this Enactment and which information it is in his power to give shall be legally bound to give such information.

In this appeal objection is taken to the Customs Officer asking questions. How can due enquiry be made without interrogation? It is impossible. I do not mean to imply that a Customs Officer may use his powers to apply what is commonly described as third degree methods, that would be inducement or threat, but he can and should question any person on a subject which it is his duty to inquire into.

Nor should the results of any such inquiry be inadmissible in evidence. Mr. Benjamin argued that if *Rasiah's case* (cited *supra*) was followed then a Police Officer could in the guise of a Customs Officer, because under the Customs Enactment, 1936, his powers were similar to a Customs Officer, interrogate persons and then tender such results in evidence despite Section 25 of the Evidence Enactment or Section 113 of the Criminal Procedure Code. But a Police Officer cannot so cloak his role. Because a Police Officer is given certain powers under the Customs Enactment, 1936, equivalent to the powers of a Customs Officer it does not mean that he can thereby free himself of the restraints imposed by Section 25 of the Evidence Enactment or Section 113 of the Criminal Procedure Code. He is a Police Officer exercising certain additional powers common to Customs Officers, that is all.

I hold that Section 126 of the Customs Enactment, 1936, should be construed in its ordinary and natural meaning, and thereby a Customs Officer continues to be authorised to interrogate persons on such subjects as may be his duty to inquire into, and such persons are legally bound to supply the information sought if within their power to do so.

The statements were further attacked on the grounds of bias. I should say at the outset that the record reads unhappily when Preventive Out-door Officer 117 Tan Chek Sam (3 P.W.) found himself unable to speak in English because he was a little tired. This Preventive Out-door Officer passed the Junior Cambridge School examination in English, and certainly laid himself open to the criticism that he desired time to consider answers.

I think there can be no doubt that when the statements Exhibit P. 1, P. 8 and P. 9 were taken someone not connected with the case should have interpreted. Three of the cases cited by Mr. Benjamin *R. v. Justices of Sunderland*[4], *Chhin Sin Choy v. Chin Kee and others*[5] and *Aloo Nathu and others v. Gagubha Disangji*[6], refer to tribunals and assist this case only in principle. But following the case of *Cheong See Leong v. Public Prosecutor*[7] it is clear that no reliance can be placed on the statements. Preventive Out-door Officer Tan Chek Sam (3 P.W.) was a principal witness for the prosecution. His interest in the case cannot be disguised, and a temptation to be prejudicial cannot be overlooked. To quote from *Cheong See Leong v. Public Prosecutor* (cited *supra*). "..... this offends against the elementary ideas of justice and therefore no reliance can be placed....."

The learned President of the Sessions Court does not deal with the point in his grounds of decision. In my view the statements were not, by reason of interpretation by Preventive Out-door Officer Tan Chek Sam (3 P.W.), thereby rendered inadmissible, but the fact that this Officer, connected as he was with the case, was the interpreter, so detracts from the value with which the statements can be assessed that they should have been disregarded.

I now come to the explanation given by the appellant (ground 2 (2) of the petition of appeal). The tobacco was not seized at or near a frontier or post, it was seized in the heart of the country, and the prosecution adduced no evidence tending to show illegal import. The case against the appellant was that the tobacco was subject to duty and by Section 114 (ii) of the Customs Enactment, 1936, it was deemed to be uncustomed to the knowledge of the defendant (the appellant) unless the contrary be proved.

This places the *onus* on the appellant and I must consider what that burden amounts to. The phrase "unless the contrary be proved" received judicial consideration in *R. v. Carr-Briant*[8] and it was there held that the burden so placed on an accused person is not higher than the burden which rests upon a plaintiff or defendant in civil proceedings. In other words, if the appellant in this case adduced a preponderance of evidence reasonable and probable the *onus* is discharged. He was not required to satisfy the Court below beyond reasonable doubt.

The defence brought evidence to show that on the 16th of February, 1949, Liew Thin Cheong (2 D.W.) bought 22 bags of Siamese tobacco from the Customs Department (it was tobacco which had been seized, confiscated and sold). In support of this the receipt Exhibit D/11/C was tendered. The same witness (2 D.W.) testified that on the 1st of March, 1949, he bought a further 8 bags of Siamese tobacco, and Exhibits D/11/A & B represent the receipts.

On the 16th March, 1949, the same witness (2 D.W.) said he sold 11 bags of this tobacco to the appellant. To support this the bill Exhibit D. 4 and the receipt Exhibit D. 10 were tendered. The appellant said he took delivery of this tobacco on the 18th of April, 1949, that is two days prior to the seizure, and the date is corroborated by the seller Liew Thin Cheong (2 D.W.).

Cheng Ah Keat (3 D.W.) gave evidence that he bought 38 bags of tobacco on the 17th January, 1949 at an auction held at the Taiping Customs Office, and he produced the receipt Exhibit D. 12.

Some of this tobacco the witness (3 D.W.) said he sold to the appellant on the 17th March, 1949, and Exhibit D. 3 is the receipted bill. Delivery was taken by the appellant in April.

Thus the defence produced evidence to show that within a reasonable time of the seizure the appellant had purchased 38 bags of tobacco from Liew Thin Cheong (2 D.W.) and Cheng Ah Keat (3 D.W.). The quantity seized on the 20th April, 1949 was 23 bags.

This tobacco the appellant said he placed in a lorry and proceeded to Bidor intending to sell it there and *en route*, but only disposed of small quantities; no witness testified as to any purchase. This part of the defence relating to the conveyance of the tobacco north by a Perak lorry is uncorroborated and materially detracts from the defence.

The prosecution suggestion was that this tobacco was never transported north, but that contraband tobacco was acquired and was in the process of being conveyed to Kuala Lumpur when seized.

Certainly the behaviour of the appellant after the tobacco was seized was at least foolish if not gravely suspicious. It is absurd to expect a Court to believe

that he would falsely say he came from Ipoh at the suggestion of the Preventive Out-door Officer (3 P.W.) who stopped the lorry and seized the tobacco.

Some stress was laid on the fact that the tobacco was hidden under copra. There is the evidence of Liew Onn (1 D.W.) that he sold the appellant forty bags of copra on the 18th/19th of April, 1949. It is perhaps not unreasonable to load the copra on top of the tobacco although a tarpaulin was on the lorry. It might be suspicious for it to be below, but not altogether inapprehensible.

The times and dates need consideration. It seems a fair conclusion that the appellant took delivery of tobacco from Liew Thin Cheong (2 D.W.) by lorry on the 18th of April, 1949. The tobacco purchased from Cheng Ah Keat (8 D.W.) cannot be so closely dated as regards delivery; the witness (3 D.W.) did not go nearer than April; though it must have been prior to the 20th. That evening he was in Bidor where he lodged with Liew Onn (1 D.W.). The prosecution case is that he acquired the tobacco alleged to be contraband at about that time. Then, according to the appellant, having failed to dispose of all his tobacco, he returned to Kuala Lumpur on the 19th of April, 1949, and there is the evidence of Joo Khim (4 P.W.) that the appellant was back again at Bidor at 7 p.m. on that day, leaving at 3.30 a.m. the 20th of April, 1949. Ding La Bing (6 P.W.) proved that lorry B5639 in which the tobacco was seized was chartered about 3.30 p.m. on the 19th of April, 1949, for Bidor, so it is a reasonable inference that this lorry did proceed to Bidor that afternoon.

Now it is not at all impossible that even though the appellant acquired on the 18th of April, 1949 a considerable quantity of tobacco of the kind seized, he would go to Bidor or that neighbourhood and receive contraband tobacco. The evidence of the driver of lorry B5639 (Tam Tham Fong, 5 P.W.) is unhappy and conflicts with the first statement (Ex. P. 8) made by him, but if that statement (Ex. P. 8) must be disregarded I am left with the remainder of the evidence taken and recorded in the Court below on this matter.

It comes to this. The appellant by his statements and those of the lorry driver Tam Tham Fong (5 P.W.) and conduct raises the gravest suspicions, but if the statements have to be discarded what is left?

I think it very likely that the statements Exhibit P. 1 and P. 8 contained the truth. I do not believe the rubbish about being told what to say and then telling lies, but I feel that the case of *Cheong See Leong v. Public Prosecutor* (cited *supra*) must be followed and thereby no reliance can be placed on them because the interpreter in each case was Preventive Out-door Officer Tan Chek Sam (3 P.W.) who had the closest interest in the case.

The learned President of the Sessions Court in his grounds of decision states: "I was by no means satisfied that the accused had established that duty had been paid upon this particular tobacco." Is that sufficient to convict; and if the statements had been rejected would the learned President of the Sessions Court have been more satisfied?

"By no means satisfied" may mean that the appellant had to some extent though not *fully* established the payment of duty; but has sufficient been done to establish a preponderance of evidence such as would enable a party to succeed in a civil suit (*R. v. Carr-Briant,* cited *supra*)?

I cannot avoid the conclusion that if the statements (Exhibit P. 1, P.8 and P. 9) had been declined in the Court below and the learned President of the Sessions Court had had his attention drawn to the principles set out in *R. v. Carr-Briant* (cited *supra*) whereby "unless the contrary be proved" is defined, then he would have been forced to determine that the appellant had sufficiently discharged the *onus* which rested upon him.

As Mr. Shepherd said, it was physically possible that the tobacco seized could have been part of the purchases made by the appellant. It is also possible that the appellant, despite having just made those purchases, went to Bidor or Ipoh or somewhere in that direction and took delivery of contraband tobacco which had hitherto evaded the vigilance of the Revenue Officers.

The weakness of the defence is the absence of evidence supporting the appellant's version of the conveyance north of tobacco from Kuala Lumpur. The strength of the defence is that the appellant adduced evidence to show that a few days prior to the seizure and on the day he alleged he transported the tobacco north from Kuala Lumpur he in fact took delivery of a greater quantity of the same kind. Further, when stopped by Preventive Out-door Officer Tan Chek Sam (3 P.W.) the appellant at once said the tobacco was bought and produced receipts.

I do not mean that the production of bills and receipts showing purchases of tobacco can invariably be accepted as conclusively discharging the *onus* cast on an accused person by Section 114 (ii) of the Customs Enactment, 1936, but the production of the

documents in this case, together with the evidence of Liew Thin Cheong (2 D.W.) and Cheng Ah Keat (3 D.W.) create in my mind a preponderance of evidence despite the paucity of evidence concerning the alleged outward trip from Kuala Lumpur on the 18th of April, 1949.

I have grave doubts as to innocence of the accused, but my duty is to ensure that no person whose guilt is not established is convicted. I must therefore allow this appeal. The conviction, confiscation and fine are set aside, and in place thereof a finding of not guilty is to be recorded.

Appeal Allowed.

K. PRITAM SINGH v. K. V. THAVER.

[Orig. Motion (Spenser Wilkinson, J.) July 11, 1949]

[Kuala Lumpur — Originating Motion No. 11 of 1949]

Registration of Businesses Ordinance, 1947, S. 9(1) — Claim for relief from disability arising from non-registration — Civil Procedure Code, S. 579 — Courts Ordinance, S. 56.

This was an application by Originating Motion for relief under Section 9 (1) of the Registration of Businesses Ordinance, 1947, against the disability imposed by the section in respect of a moneylending business carried on by Pritam Singh under the name and style of K. Pritam Singh. The business was not registered under the Ordinance and a claim of the Plaintiff for money lent had been dismissed by the learned Sessions Judge in Kuala Lumpur on that ground. The Plaintiff did not appeal against that decision but claimed relief under S. 9 (1) of the Registration of Businesses Ordinance and also asked that the Judgment of the learned Sessions Judge be set aside.

Held, (1) that the Court had no jurisdiction to grant the relief asked for in the particular application before it; and (2) that in the circumstances of the case there were no sufficient grounds for the exercise of the Court's discretion in favour of the Plaintiff.

Cases referred to :—

(1) *In re Shaer* (1927) 1 Ch. 355.

(2) *G. and C. Kreglinger v. New Patagonia Meat and Cold Storage Company Limited* (1914) A.C. 25 p. 40.

ORIGINATING MOTION.

Ng Kok Thoy for the Plaintiff.

M. Edgar for the Defendants.

Spenser-Wilkinson, J. : — This was an application by way of an originating motion by one Pritam Singh (hereinafter referred to as "the plaintiff") for relief under the proviso to section 9(1) of the Registration of Businesses Ordinance, 1947, against the disability imposed by this section in respect of a business carried on by him under the name and style of K. Pritam Singh.

The Order applied for in the motion paper reads as follows :—

i. That general relief against the disability imposed by section 9 (1) of the Registration of Businesses Ordinance, 1947, be granted to the Applicant on such conditions as to costs and service and publication of notice of this application as the Court may be pleased to order.

ii. That the Order of the Learned Session Judge in Kuala Lumpur Sessions Court Civil Suit No. 10/49 be set aside.

iii. That the said Kuala Lumpur Sessions Court Civil Suit No. 10 of 1949 be further heard and considered on its merits.

iv. That such other relief be granted as to Court seems just.

The application arises out of a civil suit commenced by Pritam Singh in the Sessions Court, Kuala Lumpur in which he claimed the sum of $547.20 being the principal and interest due on a promissory note for $480.00 signed by the defendant in his favour. In the written statement by the respondent who was defendant in that suit he raised the question of registration by the plaintiff of his business and when the suit came on for hearing before the President he dismissed the plaintiff's claim at the close of the plaintiff's case on the ground that the plaintiff was carrying on a business of money-lending which should have been registered by reason of the fact that the business name adopted was the plaintiff's own name preceded by the initial "K" being that of his father Kashir Singh.

The plaintiff is not appealing against the judgment of the President, though I understand that an appeal was filed and was subsequently withdrawn. However this may be, the judgment of the President is not before me on appeal; and in view of the provisions of section 56 of the Courts Ordinance I am of opinion that it cannot be before me by way of revision at the instance of the plaintiff. The section reads as follows :—

> Where an appeal lies from any decision in any civil matter, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of a party who could have appealed.

I, therefore, have no jurisdiction to grant branches (ii) and (iii) of the order asked for on this motion, and that part of the plaintiff's application must, therefore, fail.

The first part of the application asks for general relief, but there was no evidence before me of any contracts other than the one sued on in the Sessions Court in respect of which relief is required, and Mr. Ng Kok Thoy agreed that his application was in effect for relief in respect of this particular contract. In